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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar OFFICE OF THE CHIEF TRIAL COUNSEL - ENFORCEMENT ERIC H. HSU 1149 South Hill Street Los Angeles, CA 90015-2299 213-765-1247 Bar # 213039	Case number(s) 03-0-01018-RAP <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div>	(for Court's use) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center;">MAY 19 2005 <i>[Signature]</i></div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent STEPHEN FRANCIS GUINER, ESQ. 404 E. Las Tunas Dr, #202 San Gabriel, CA 91776-1549 626-287-2200 Bar # 44495	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of STEPHEN FRANCIS GUINER, ESQ. Bar # 44495 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 27th 1969
(date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation, and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages. *(24)*
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

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(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- (a) ☐ costs added to membership fee for calendar year following effective date of discipline
(b) ☒ costs to be paid in equal amounts prior to February 1 for the following membership years:

2006, 2007, AND 2008.

(hardship, special circumstances or other good cause per rule 282, Rules of Procedure)

- (c) ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
(d) ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) ☒ Prior record of discipline [see standard 1.2(f)]

(a) ☒ State Bar Court case # of prior case 98-0-03437

(b) ☒ Date prior discipline effective October 31, 2003

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rule 3-110(A); Business and

Professions Code sections 6068, subdivision (m), 6103 and 6106.

(d) ☒ Degree of prior discipline Six months stayed suspension and two years probation.

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline".

(2) ☐ Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ Trust Violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(4) ☐ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) ☐ Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances are involved.**

Additional aggravating circumstances: NONE

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____
in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

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- (10) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☒ **No mitigating circumstances are involved.**

Additional mitigating circumstances: NONE

D. Discipline

1. ☒ Stayed Suspension.

(a) ☒ Respondent must be suspended from the practice of law for a period of Six months

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this Stipulation.
- iii. ☐ and until Respondent does the following: _____

The above-referenced suspension is stayed.

2. ☒ Probation.

Respondent is placed on probation for a period of One year, which will commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.) This period of probation shall run consecutively from the end of Respondent's prior discipline in connection with case number 98-0-03437

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E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) ☒ Within 30 days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and, if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (6) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) ☐ Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session.
- ☒ No Ethics School recommended. Reason: Respondent has already completed Ethics School in connection with case number 98-0-03437
- (8) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) ☒ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions

☒ Law Office Management Conditions

☐ Medical Conditions

☐ Financial Conditions

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F. Other Conditions Negotiated by the Parties:

- (1) ☐ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☒ **No MPRE recommended. Reason:** Respondent has already taken and passed the MPRE in connection with case number 98-0-03437.
- (2) ☒ **Other Conditions:** See PAGE 11.

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Law Office Management Conditions

- a. ☐ Within ____ days/ ____ months/ ____ years of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- EH** b. ☒ Within ____ days/ 12 months ____ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 9 hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ____ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: STEPHEN FRANCIS GUINER

CASE NUMBER: 03-O-01018-RAP

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violating the specified rule of the California Rules of Professional Conduct, as follows:

I. Facts.

1. Stephen Francis Guiner ("Respondent") was admitted to the practice of law in the State of California on June 27, 1969, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On January 17, 1997, Tanya Vener ("Vener") filed a petition for an order to appoint her as the successor trustee of her deceased father's trust, the Eugene Brizzi trust ("the Brizzi trust"), in the Los Angeles County Superior Court case number BP044458 ("the trust action").
3. On March 7, 1997, Eugene Frederick Brizzi ("Eugene") filed a petition for an order to appoint him as the successor trustee of the Brizzi trust.
4. On April 8, 1997, a stipulation and order for the appointment of Vener and Eugene and their siblings, Paul Brizzi ("Paul"), Kirk Brizzi ("Kirk") and Gary Brizzi ("Gary"), as co-trustees of the Brizzi trust was filed.
5. On August 13, 1997, Eugene and Paul employed Respondent to stop the sale of real property in Pico Rivera and Lake Almanor belonging to the Brizzi trust, by Vener, Kirk, and Gary. Paul paid Respondent \$3,000 in advance fees for handling the property dispute.
6. On November 5, 1997, Respondent filed a lis pendens against the properties on behalf of Paul and Eugene.
7. On January 13, 1998, Vener filed a motion to expunge the lis pendens.

8. On February 25, 1998, the superior court granted Vener's motion to expunge the lis pendens.
9. In or about April 1998, Vener and Kirk placed the Pico Rivera property in their names and obtained a loan against the property.
10. On May 19, 1998, Vener filed a petition for an order authorizing the sale of the Lake Almanor property and enjoining Eugene from disrupting the sale.
11. On June 22, 1998, Respondent filed an ex parte application for a temporary restraining order and request for an Order to Show Cause hearing to remove Vener, Kirk, and Gary as co-trustees.
12. On June 22, 1998, the superior court issued a temporary restraining order enjoining Vener, Kirk, and Gary from selling, encumbering, transferring or disposing of trust property ("the TRO").
13. On August 6, 1998, the TRO was modified to permit Vener and/or Kirk to make a single mortgage payment on behalf of the Brizzi trust.
14. On January 19, 1999, Respondent filed an ex parte application for an order suspending the trust powers of Vener, Kirk and Gary ("the application").
15. On January 19, 1999, a hearing on the application was held. The superior court granted the application and suspended the powers of all trustees for 30 days, pending a hearing on the matter, and ordered each party to exchange accountings, with documentary support, by February 9, 1999. A hearing on the accounting was set for March 16, 1999.
16. Respondent did not file an accounting on Paul and Eugene's behalf by February 9, 1999. No hearing was held in the trust action on March 16, 1999, and Respondent took no other action on behalf of Paul and Eugene to compel the accounting from the other co-trustees.
17. Respondent contends that he could not complete the accounting ordered by the superior court, because Respondent was unable to locate Vener.

II. Conclusions of Law.

- A. By not filing the accounting on Paul and Eugene Brizzi's behalf by February 9, 1999, and by taking no action on their behalf to compel an accounting from the other co-trustees, Respondent recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A) of the California Rules of Professional Conduct.

DISMISSAL.

The parties respectfully request this court to dismiss the following alleged violation, in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
03-O-01018	Two	Rule 3-700(D)(1) of the Rules of Professional Conduct
03-O-01018	Three	Rule 3-700(A)(2) of the Rules of Professional Conduct
03-O-01018	Four	Business and Professions Code section 6068, subdivision (i)

AUTHORITIES SUPPORTING DISCIPLINE.

a. Standards.

Standard 1.7(a) provides that, where a member has a record of one prior imposition of discipline, the degree of discipline shall be greater than that imposed in the prior proceeding. However, standard 1.7 cannot be applied without regard to the other provisions of the standards, particularly standard 1.3. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.) To fulfill the purposes of attorney discipline, the nature and chronology of Respondent's prior record of discipline must be examined. (*Id.*)

Standard 2.4(b) provides that, where a willful failure to perform services involves an individual matter or matters not amounting to a pattern, the discipline shall be reproof or suspension, depending on the gravity of the harm and the extent of such misconduct.

b. Case Law.

Van Sloten v. State Bar (1989) 48 Cal.3d 921.

In a single client matter, the attorney was disciplined for failing to perform legal services for which he was employed, in violation of former rule 6-101 [which is congruous to the current rule 3-110(A)], and sections 6068 and 6103 of the Business and Professions Code. Van Sloten had no prior record of discipline since his admission to practice law in 1977. In aggravation, Van Sloten failed to appear for oral argument before the Review Department. The Court gave little weight to Van Sloten's failure to concede full responsibility for his misconduct, as an

aggravating factor, because his attitude was based on an honest, although mistaken, belief in his innocence.

The Court imposed a six-month stayed suspension, on condition that Van Sloten be placed on probation for one year and that he take and pass the MPRE, and other probation conditions.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Within 30 days from the date the State Bar Court approves this stipulation, Respondent must send a written notification to Paul and Eugene Brizzi, via certified mail, to arbitrate any fee dispute matter pursuant to Business and Professions Code section 6200 et seq. Pursuant to section 6204, subdivision (a), of the Business and Professions Code, Respondent must also offer to be bound by the award of the arbitrator. Respondent must provide the Office of Probation with a copy of his notice of fee arbitration within 10 days of its mailing.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A(7), was May 17, 2005.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of May 17, 2005, the estimated prosecution costs in this matter are approximately \$4,154. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

5-17-05
Date


Respondent's signature

STEPHEN FRANCIS GUINER
Print name

Date

Respondent's Counsel's signature

N/A
Print name

MAY 17, 2005
Date


Deputy Trial Counsel's signature

ERIC H. HSU
Print name

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In the Matter of STEPHEN FRANCIS GUINER	Case number(s): 03-0-01018-RAP
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

Date

5/18/05


RICHARD A. HONN

Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on May 19, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed May 19, 2005**

in a sealed envelope for collection and mailing on that date as follows:

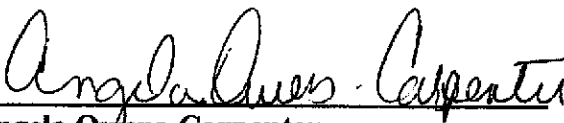
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**STEPHEN FRANCIS GUINER ESQ
404 E LAS TUNAS DRIVE #202
SAN GABRIEL CA 91776 1549**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ERIC HSU ESQ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 19, 2005.


Angela Owens-Carpenter
Case Administrator
State Bar Court